

Jamison R. McCune, OR Bar No. 135547

mccune@bodyfeltmount.com

BODYFELT MOUNT, LLP

319 SW Washington Street, Suite 1200

Portland, Oregon 97204

(503) 243-1022

Attorneys for Plaintiff

Veronica L. Manolio, AZ Bar No. 020230

vmanolio@mf-firm.com

MANOLIO & FIRESTONE, PLC

8686 E. San Alberto Dr., Suite 200

Scottsdale, Arizona 85258

(480) 222-9100

Pro Hac Vice Attorney for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORLTAND DIVISION

PACIFIC OFFICE AUTOMATION, INC., an
Oregon corporation,

Plaintiff,

v.

PITNEY BOWES, INC., a Delaware
corporation; PITNEY BOWES GLOBAL
FINANCIAL SERVICES, LLC, a Delaware
limited liability company; THE PITNEY
BOWES BANK, INC., a federal banking
institution; WHEELER FINANCIAL FROM
PITNEY BOWES, INC., a Delaware corp.;

Defendants.

Case No. 3:20-cv-00651-AC

**RESPONSE TO MOTION FOR
LEAVE TO AMEND ANSWER
AND ASSERT COUNTERCLAIM**

Pacific Office Automation, Inc. (“POA”) objects to the Motion to Leave filed by Defendants Pitney Bowes, Inc., *et al.* (“Pitney”) (Doc. 32) which seeks to amend its prior Answer to insert an untimely and improper Counterclaim. (Doc. 32-1). The alleged Counterclaim arises out of the identical contract/contractual relationship pled by POA, yet Pitney offers no explanation why it failed to plead a compulsory Counterclaim.

RESPONSIVE MEMORANDUM

Coming on the heels of recent discovery dispute(s), Pitney's Motion for Leave appears to be nothing more than gamesmanship.

As dictated by Rule 13 of the Federal Rules, a counterclaim is deemed compulsory when it "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." Fed. R. Civ. P. 13(a)(1)(A). Compulsory counterclaims are required to be brought at the time a party files its answer, and failure to plead a compulsory counterclaim is deemed as a waiver. *See, e.g., Hans v. Homesite Indem. Co.*, No. CV 08-0393-PHX-JAT, 2009 U.S. Dist. LEXIS 68501, at *10-11. 2009 WL 2169170 (D. Ariz. July 16, 2009) citing *Ralston-Purina Co. v. Bertie*, 541 F.2d 1363, 1367 (9th Cir. 1976) (compulsory counterclaim is required to be brought at the time of an answer); *Dragor Shipping Corp. v. Union Tank Car Co.*, 378 F.2d 241, 244 (9th Cir. 1967) (Failure to timely plead a compulsory counterclaim constitutes a waiver.) Rule 13(f) may permit a late-filed counterclaim, but only if that counterclaim was originally omitted "through oversight, inadvertence, or excusable neglect," or for some other justified reason. *Ralston-Purina, supra*, at 1367. When a motion to leave does not reasonably explain an omitted compulsory counterclaim, the trial court should deny the amendment. *Id.*

Just like the defendant in *Ralston-Purina*, Pitney offers no explanation or basis for its seven-month delay in asserting its counterclaim. Pitney admits that its counterclaim arises out of the same "Dealer Agreement" that forms POA's claims, and Pitney flaunts the fact that its counterclaim(s) were known at the time it filed an Answer (by claiming that Pitney already "telegraphed" its need for a counterclaim in its Affirmative Defenses). Nonetheless, Pitney offers no excuses of oversight, inadvertence or excusable neglect. Pitney ignores the fact that discovery has been ongoing for several months and that fact discovery is scheduled to be completed by April. Pitney also disregards the fact that it suggested foregoing Initial Disclosures, intentionally hiding its plans to later amend.

While Pitney suggests that POA will suffer “no prejudice,” that is not the test. POA does not need to demonstrate prejudice, but rather Pitney was required to provide this Court with a viable reason why it intentionally omitted its counterclaim previously. Without an explanation, Pitney is simply not entitled to file a compulsory counterclaim that should already be deemed as waived.

For these reasons, Pitney’s motion should be denied entirely.

DATED this 21st day of January, 2021.

BODYFELT MOUNT LLP

MANOLIO & FIRESTONE, PLC

By: /s/ Jamison R. McCune

Jamison R. McCune, OSB #135547

Email: mccune@bodyfeltmount.com

Phone: (503) 243-1022

Local Attorneys for Plaintiff

By: /s/ Veronica L. Manolio

Veronica L. Manolio, AZ Bar No. 020230

Email: vmanolio@mf-firm.com

Phone: (480) 222-9100

Pro Hac Vice Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing to be served upon all counsel of record to this matter on this 21st day of January, 2021, via the Court's CM/ECF System.

Philip Van Der Weele, OSB #863650
K&L GATES LLP
One SW Columbia Street, Suite 1900
Portland, OR 97204
Tel.: (503) 226-5727\Fax: (503) 248-9085
Email: phil.vanderweele@klgates.com
Attorneys for Defendants

Jamison R. McCune, OSB #135547
BODYFELT MOUNT LLP
319 SW Washington St., Suite 1200
Portland, OR 97204
Tel: 503-243-1022
Email: mccune@bodyfeltmount.com
Local Attorney for Plaintiff

By: /s/ Janel Rubert